

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MONTEZ DELANO BAKER

Petitioner,

CASE NUMBER: 10-10774
HONORABLE VICTORIA A. ROBERTS
Magistrate Judge Paul J. Komives

v.

NICK LUDWICK,

Respondent.

ORDER

On June 14, 2011, this Court issued an Order Adopting Magistrate Judge Paul Komive's Report and Recommendation ("R & R"), denying (1) Petitioner Montez Baker's application for a writ of habeas corpus and (2) a certificate of appealability. (Doc. 12). On July 11, 2011, Petitioner moved for a certificate to appeal the Court's order denying habeas relief and to proceed *in forma pauperis* ("IFP") on appeal. (Docs. 15 and 16).

In its June 14 Order, the Court expressly declined to issue a certificate of appealability. Thus, Petitioner's Motion for Issuance of Certificate of Appealability will be treated as a motion to reconsider that decision. The Court will only reconsider a prior ruling if the movant shows "a palpable defect by which the court and the parties and other persons entitled to be heard on the motion have been misled [and] that correcting the defect will result in a different disposition of the case." E.D. MICH. LR 7.1 (h)(3). Palpable defects are those which are "obvious, clear, unmistakable, manifest or plain." *Mich. Dep't of Treasury v. Michalec*, 181 F.Supp.2d 731, 734 (E.D. Mich. 2002).

If the moving party “merely present[s] the same issues ruled upon by the [C]ourt, either expressly or by reasonable implication,” the Court will deny the motion for reconsideration. E.D. MICH. LR 7.1(h)(3).

Petitioner does not establish that the Court was misled by a palpable defect. Instead, he re-hashes the arguments made in his original habeas petition and says he made a substantial showing of the denial of a constitutional right. The Court fully considered Petitioner’s constitutional claims on *de novo* review of the portions of the R & R objected to. The Court determined he was not entitled to a certificate of appealability, adopting the magistrate’s determination that he did not make a substantial showing of the denial of a constitutional right and reasonable jurists would not find debate the Court’s resolution of his claims. See 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court **DENIES** Petitioner’s motion for reconsideration.

Petitioner also seeks to proceed IFP on appeal. Although the Court declines to issue a certificate of appealability, the Court of Appeals may do so, FED. R. APP. P. 22(b)(1), and Petitioner may be entitled to IFP status. See *generally Jennings v. United States*, 472 F.Supp.2d 1067, 1070 (S.D. Ill. 2006) (courts sometimes grant IFP status even where they deny a certificate of appealability).

However, the statute requires Petitioner to submit an affidavit that includes a statement of his assets, and which states the nature of the appeal and his belief that he is entitled to redress. See 28 U.S.C. § 1915(a)(1). He did not do this. He also failed to state the issues he intends to present on appeal. See FED. R. APP. P. 24 (a)(1)(C). Petitioner is ordered to **SHOW CAUSE by Monday, September 26, 2011** why he is

entitled to proceed IFP on appeal. His response must include a statement of all assets, claim an entitlement to redress, and state the issues he intends to present on appeal.

To conclude, the Court **DENIES** Petitioner's motion to reconsider its order denying a certificate of appealability, and orders Petitioner to **SHOW CAUSE** why the Court should not also deny his motion to proceed IFP on appeal.

IT IS ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: July 25, 2011

The undersigned certifies that a copy of this document was served on the attorneys of record and Montez Delano Baker by electronic means or U.S. Mail on July 25, 2011.

s/Linda Vertriest
Deputy Clerk